IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.335 OF 2005

Sethuraman Muthalaga ...Applicant

Versus

S.Jaychandran Salai Nadar & Anr. ...Respondents

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Mr.C.D.Pendse i/b Mr.P.B.Patil for Applicant.

Ms.R.M.Gadhavi, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 28, 2005.

P.C.

1. I see no infirmity in the approach adopted by the Court below in invoking the provisions of Section 427 of the Criminal Procedure Code in the fact situation of the present case. Incidentally, in the present case, the order of conviction and sentence in the previous matter came to be pronounced on the same day. That does not mean that there was no previous order of conviction recorded against the accused. To overcome this

position, Counsel for the Applicant/complainant would contend that Section 427 can be invoked only when person is already undergoing the sentence of imprisonment which is the expression employed in the said provision. The argument seems to be attractive at the first blush. However, the same is devoid of any merit. This provision empowers the Court to direct that the subsequent sentence shall run concurrently with the previous sentence, if already existing. In other words, as and when the accused will be required to undergo the sentence in respect of two separate convictions recorded against him, the order passed by the Court in exercise of powers under Section 427 of Criminal Procedure Code would come into play. The nature of order itself indicates that it has to be given effect to in posteriority and the power cannot be restricted only if the accused was put in jail at the relevant point of time when the Court intends to exercise that power. It is enough for the Court to note that the accused is already suffering order of conviction and sentence. In some cases, it is possible that the accused is enjoying bail or has been granted bail pending admission of the appeal

against the order of conviction. That would not mean that the Trial Court would be denuded of the power to pass order under Section 427 of Criminal Procedure Code while recording subsequent conviction and sentence.

2. Viewed in this perspective, there is no substance in the argument as canvassed. Rejected.

A.M.KHANWILKAR, J.